



Federal Communications Commission
Washington, D.C. 20554

February 12, 2008

DA 08-352

AMTS Consortium, LLC
2649 Benvenue Ave., #2-3
Berkeley, CA 94704
Attn: Warren Havens

Martin W. Bercovici
Keller and Heckman, LLP
1001 G Street, N.W., Suite 500 West
Washington, DC 20001

RE: FCC File Nos. 0003041229, 0003042377 (filed May 24, 2007)

Dear Mr. Havens and Mr. Bercovici:

This letter addresses two issues relating to the above-referenced applications filed by AMTS Consortium, LLC (ACL) for Commission consent to partition and disaggregate spectrum licensed under Call Sign WQCP810 to Northeast Utilities Service Company (NUSCO), and by NUSCO to partition and disaggregate spectrum licensed under Call Sign WQEJ718 to ACL.

Background. ACL was the high bidder for the Channel Block B license for the Northern Atlantic Automated Maritime Telecommunications System region in Auction No. 57, and was granted the license under Call Sign WQCP810 on April 26, 2005. On May 4, 2005, ACL submitted an application to partition and disaggregate to NUSCO the entire forty-channel block in New Hampshire, western Massachusetts, and part of eastern Connecticut; and to partition and disaggregate to NUSCO twenty-eight of the forty channels in parts of New Haven, Litchfield, and Fairfield Counties, Connecticut.¹ On November 9, 2005, the Wireless Telecommunications Bureau (Bureau), Public Safety and Critical Infrastructure Division denied a petition to deny the application filed by Paging Systems, Inc. (PSI), and consented to the assignment,² which was consummated on December 28, 2005.³ NUSCO was assigned Call Sign WQEJ719 for the assigned spectrum. Because ACL utilized a small business bidding credit to acquire the license, and NUSCO did not meet the eligibility criteria for such a bidding credit, ACL reimbursed the Commission for the amount of unjust enrichment as determined pursuant to Section 1.2111(d)(2) of the Commission's Rules.⁴ On January 30, 2007, the Bureau's Mobility Division⁵ denied PSI's

¹ See FCC File No. 0002147762 (filed May 4, 2005).

² See AMTS Consortium, LLC, *Order*, 20 FCC Rcd 17975 (WTB PSCID 2005).

³ See FCC File No. 0002425019 (filed Dec. 29, 2005).

⁴ 47 U.S.C. §1.2111(d)(2).

petition for reconsideration of the *Order* denying its petition to deny.⁶ PSI's application for review of the Mobility Division's decision remains pending.⁷

On May 24, 2007, ACL filed an application to partition and disaggregate to NUSCO an additional six channels in the same parts of Connecticut where ACL assigned NUSCO twenty-eight channels.⁸ On the same date, NUSCO filed an application to assign back to ACL six of the channels that had been assigned to NUSCO in those areas.⁹ ACL asserts in an attachment to its application that no unjust enrichment payment should be required for this assignment to NUSCO because ACL made an unjust enrichment payment in association with the original assignment, and "the instant application is solely for purposes of [e]ffecting a realignment of some of those channels between [ACL] and NUSCO."¹⁰ On June 13, 2007, PSI filed comments requesting that the Commission condition its consent to the applications on the outcome of PSI's application for review regarding the original assignment to NUSCO.

Discussion. Neither ACL nor NUSCO objected to PSI's request. Consequently, we will condition our consent to the assignments on the outcome of the pending application for review.¹¹

With respect to unjust enrichment payments, we conclude that the requirements of the Commission's Rules apply to the instant assignment, notwithstanding that ACL made an unjust enrichment payment in connection with the prior assignment to NUSCO. Under Section 1.2111(d) of the Commission's Rules, if an entity wishes to assign a license acquired with bidding credits to another entity during the first five years of the initial license term, the assignee must pay unjust enrichment to the federal government for the amount of bidding credit plus interest, unless the assignee would qualify for the same level of bidding credit.¹² ACL acquired the subject channels in 2005, having used bidding credits in a Commission auction. It is undisputed that NUSCO does not qualify for a bidding credit. The proposed assignment from ACL to NUSCO of an additional six channels in the same parts of Connecticut where ACL previously assigned NUSCO twenty-eight channels involves a different part of the spectrum, and

⁵ Pursuant to a Commission reorganization effective September 25, 2005, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. *See* Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

⁶ AMTS Consortium, LLC, *Order on Reconsideration*, 22 FCC Rcd 1597 (WTB MD 2007), *review pending*.

⁷ *See* Application for Review (filed March 1, 2007).

⁸ *See* FCC File No. 0003041229 (filed May 24, 2007).

⁹ *See* FCC File No. 0003042377 (filed May 24, 2007).

¹⁰ *See* FCC File No. 0003041229, Attachment: Unjust Enrichment.

¹¹ *See, e.g.*, Triad Cellular L.P. and GCC License Corporation, *Order*, 12 FCC Rcd 17542, 17544 ¶ 7 (WTB CWD 1997) (imposing a similar condition).

¹² 47 U.S.C. §1.2111(d).

is therefore separate from the original assignment and subject to unjust enrichment. It is immaterial that the proposed assignment would involve a swap back to ACL of six of the channels originally assigned by ACL to NUSCO, rather than an additional sale.¹³ ACL cites no authority, and we are aware of none, suggesting that no unjust enrichment payment is due under the present circumstances.¹⁴ We therefore conclude that unjust enrichment provisions apply to the proposed assignment, and ACL will be required to reimburse the Commission for unjust enrichment, plus accrued interest, as determined pursuant to Section 2.111(d) and (e) of the Commission's Rules.¹⁵

Accordingly, IT IS ORDERED pursuant to Sections 4(i), 303(r), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 310(d), that applications FCC File Nos. 0003041229 and 0003042377, both filed May 24, 2007, SHALL BE PROCESSED consistent with this action and the Commission's Rules. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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¹³ See *Winstar LMDS, LLC, Order*, 17 FCC Rcd 7084, 7088 ¶ 12 (WTB AIAD 2002) (“In calculating an unjust enrichment payment, the Commission does not take into consideration the amount of profit or loss a licensee incurs when selling its assets. Rather, the Commission looks towards the benefit initially received by the licensee at the time the spectrum was auctioned.”).

¹⁴ See *Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5591 ¶ 134 (1994) (describing the Commission's unjust enrichment rules as “strict”).

¹⁵ 47 U.S.C. § 1.2111(d), (e).